

FIRST REGULAR SESSION

SENATE BILL NO. 5

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLINDT.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0469S.01I

AN ACT

To repeal section 394.312, RSMo, and to enact in lieu thereof two new sections relating to electric service to annexed areas, with an effective date and an emergency clause for a certain section.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 394.312, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 71.516 and 394.312, to read as follows:

71.516. 1. Prior to any annexation, every city, town, or village shall ensure that there is an adequate supply of electric service to the area to be annexed. The city, town, or village may satisfy this requirement by making a determination that there is a municipal utility or electrical corporation authorized and capable of serving the annexed area or by granting authority to an electric cooperative to serve all or part of the annexed area. Alternatively, the city, town, or village may satisfy this requirement by requiring all electric suppliers serving within the area to be annexed to enter into a territorial agreement under section 394.312, RSMo. Any grant of authority to a rural electric cooperative to serve in the annexed area shall be contained in the annexation ordinance. The electric cooperative's property and operations in the annexed area will be subject to taxation by the city, town, or village as provided by other applicable law.

2. Notwithstanding section 394.080, RSMo, any rural electric cooperative granted authority by a city, town, or village to provide electric service within an annexed area may generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute, sell, supply, and dispose of electric energy within the area designated by the city, town, or village in addition to any other authority or powers the rural electric cooperative may have under any other

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

law. Any such grant of authority to an electric cooperative to serve all or part of the annexed area shall not affect, amend, modify, or diminish in any way the rights of any other electric suppliers to provide service in the annexed area as otherwise provided by any other law.

3. In complying with its obligations under this section, no city, town, or village shall demand or require that a municipal utility, electric corporation, or an electric cooperative be required to transfer any of its electric facilities or customers to another electric provider.

4. Nothing contained in this section shall prohibit municipal utility, electric corporation, or an electric cooperative from continuing to serve its existing customers and structures in the annexed area as provided in sections 91.025, RSMo, 393.106, RSMo, and 394.315, RSMo.

394.312. 1. Competition to provide retail electric service, as between rural electric cooperatives, electrical corporations and municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section.

2. Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality, notwithstanding the provisions of section 394.020 and of section 394.080 to the contrary, and any and all powers granted to a municipally owned utility, pursuant to the agreement, to operate in areas beyond the corporate municipal boundaries of its municipality. Where the parties cannot agree, they may, by mutual consent of all parties involved, petition the public service commission to designate the boundaries of the electric service areas to be served by each party and such designations by the commission shall be binding on all such parties. **A city, town, or village that has a pending annexation may petition the public service commission to designate, within the area to be annexed, the boundaries of the electric service areas to be served by either the municipal utility, electric corporation, or electric cooperative, and such designations by the commission shall be binding on all such electric suppliers. The commission shall determine and rule on such applications by annexing municipalities within ninety days of the filing by the municipality. In all other respects,** petitions shall be made pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity and the commission shall be required to hold evidentiary hearings on all petitions so received. The commission shall base its final determination upon a finding that the commission's designation of electric service areas is in the public interest.

3. The provisions of sections 386.310, RSMo, and 393.106, RSMo, and sections 394.160 and 394.315 to the contrary notwithstanding, before becoming effective, all territorial

agreements entered into under the provisions of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligations of any party to an agreement, shall receive the approval of the public service commission by report and order. Applications for commission approval shall be made and notice of such filing shall be given to other electrical suppliers pursuant to the rules and regulations of the commission governing applications for certificates of public convenience and necessity. Unless otherwise ordered by the commission for good cause shown, the commission shall rule on such applications not later than one hundred twenty days after the application is properly filed with the secretary of the commission.

4. The commission shall hold evidentiary hearings to determine whether such territorial agreements should be approved or disapproved, **except in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties.** The commission may approve the application if it [shall after hearing] [determine] **determines** that approval of the territorial agreement in total is not detrimental to the public interest. Review of commission decisions under this section shall be governed by the provisions of sections 386.500 to 386.550, RSMo.

5. Commission approval of any territorial agreement entered into under the provisions of this section shall in no way affect or diminish the rights and duties of any supplier not a party to the agreement or of any electrical corporation authorized by law to provide service within the boundaries designated in such territorial agreement. In the event any electrical corporation which is not a party to the territorial agreement and which is subject to the jurisdiction, control and regulation of the commission under chapters 386, RSMo, and 393, RSMo, has heretofore sought or hereafter seeks authorization from the commission to render electric service or construct, operate and maintain electric facilities within the boundaries designated in any such territorial agreement, the commission, in making its determination regarding such requested authority, shall give no consideration or weight to the existence of any such territorial agreement and any actual rendition of retail electric service by any of the parties to such territorial agreement will not preclude the commission from granting the requested authority.

6. The commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement. Such complaints shall be brought and prosecuted in the same manner as other complaints before the commission. [After hearing,] **The commission shall hold an evidentiary hearing regarding such complaints except in those instances where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, such hearings may be waived by agreement of the parties.** If the commission determines that [the] a territorial agreement [is not] **that is the subject of a complaint is no longer** in the

public interest, it shall have the authority to suspend or revoke the territorial agreement. If the commission determines that the territorial agreement is still in the public interest, such territorial agreement shall remain in full force and effect. Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any rural electric cooperative or municipally owned utility, or to amend, modify, or otherwise limit the rights of electrical suppliers to provide service as otherwise provided by law.

7. Notwithstanding the provisions of section 386.410, RSMo, the commission shall by rule set a schedule of fees based upon its costs in reviewing proposed territorial agreements for approval or disapproval. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case. The fees shall be paid to the director of revenue who shall remit such payments to the state treasurer. The state treasurer shall credit such payments to the public service commission fund, or its successor fund, as established in section 33.571, RSMo. Nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any rural electric cooperative or municipally owned utility and except as provided in this section nothing shall affect the rights, privileges or duties of rural electric cooperatives, electrical corporations or municipally owned utilities.

Section B. Because immediate action is necessary to aid cities, towns, or villages in orderly annexations, the enactment of section 71.516 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety and is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of section 71.516 of this act shall be in full force and effect on June 1, 2005, or upon its passage and approval, whichever later occurs.

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